IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14439 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NASIMAHMED ALIAS PINTOO BISMILLAHKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14439 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MS HB PUNANI ASST GOVERNMENT PLEADER for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 20/12/2004

ORAL JUDGEMENT

#. Heard Ms.K.U.Mishra, learned counsel appearing for the petitioner and Ms.H.B.Punani, learned AGP for the

other side.

#. The present petition is filed under Article 226 read with Articles 21 and 22(5) of the Constitution of India challenging the legality and validity of the order of detention dated 8.6.2004 passed by the Police Commissioner, Surat City under purported exercise of powers vested with the detaining authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act").

#. The petitioner is branded as "a bootlegger" within the meaning of Section 2(b) of the Act, as he was found involved in offences registered under the Bombay Prohibition Act. Challenging the order of detention on various grounds mentioned in the Memo of Petition, Ms.Mishra has pointed out that while recording subjective satisfaction for passing of the order of detention, the authority viz. Police Commissioner, Surat city has considered two main aspects. The first is of registration of one solitary criminal offence by Bapunagar Police Station for the offence punishable under Section 66(B), 65-E, and 81 of the Bombay Prohibition Act. The police machinery in the alleged offence has recovered 805 liters country liquor and two scooters, so also, one motor bike. The second aspect considered by the authority is that no formal statement of any witnesses were produced before the detaining authority by the sponsoring machinery and therefore, there was no scope to record finding to the effect that the activity of the present petitioner has potentiality to disturb either public health or public order.

#. One more point argued by Ms.Mishra that co-detenu of the present petitioner have been set at liberty by this Court while allowing Special Civil Application No.12264 of 2004 vide order dated 14th December, 2004. So, on the ground of parity also, the present petition should be allowed.

#. Undisputedly, this is case of registration of one solitary incident, considered by the authority. So ratio of the decision in case of SOHANLAL SURAJARAM VISNOY V. STATE OF GUJARAT, 2004(2) GLR 1051, where this Court has observed in para-4 & 5 as under :

"4. Article 22(3) of the Constitution of India expressly provides that the safeguards contained in Art.22(1) and 22(2) of the Constitution of are not to apply to preventive detention. Article 22(4) of the Constitution

provides and opens with double negative, put in positive form, and in its real substance, means that a law which provides for preventive detention for a period longer than three months, shall contain all the provisions prescribed in clauses (4) and (5) of Article-22 of the Constitution. Article 22(5) of the Constitution prescribes that when any person under a preventive detention law is detained, the authority making the order, shall as soon as may be, communicate to such person, the grounds on which the order has been made, and shall afford him with the earliest opportunity of making a representation against the order. Article 22(5) of the Constitution is of general importance and operation in respect of every detention order made under any preventive detention law.

5. In this group of petitions, all the detenus, except one in Special Civil Application No.825 of 2003, are treated and described as "bootleggers" as defined under Sec.2(b) of the P.A.S.A.Act and only on offence is registered against each detenu under the provisions of the Bombay Prohibition Act, 1949, whereas in Special Civil Application No.825 of 2003, the detenu is treated as "dangerous person" as defined in Sec.2(c) of the P.A.S.A. Act, and in this case also, a solitary incident is made basis for passing the detention order against him."

#. Therefore, the petition shall have to be allowed on the above solitary ground and other grounds are not required to be discussed in detail.

#. The petition succeeds and the same is allowed. The order of detention dated 8.6.2004 is vitiated and the same is hereby quashed and set aside. The detenu NASIMAHMED ALIAS PINTOO BISMILLAHKHAN PATHAN who has been detained at Bharuch Jail at Bharuch be set at liberty forthwith if not required in any other case.

Rule is made absolute accordingly. No order as to costs.

Direct Service is permitted.

Date :20/12/2004 [C.K.Buch, J.]

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